

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SURPLUS SOURCE GROUP, LLC and
ROBERT L. PRUITT, III,
Plaintiffs,

v.

MID AMERICA ENGINE, INC. and
KEITH COLEMAN,
Defendants.

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Case No. 4:08-cv-049

ORDER DENYING PLAINTIFFS' MOTION FOR ATTORNEY'S FEES

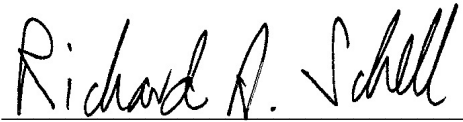
Before the court are the "Plaintiffs' Motion for Attorney's Fees and Brief in Support" (de # 60) and a Response (de # 63) and Reply (de # 65) thereto. On September 23, 2008, the court signed an order granting the Plaintiffs' motion to compel regarding jurisdictional discovery requests. Rule 37 provides that, upon the granting of a motion to compel and after giving an opportunity to be heard, "the court must. . .require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." FED. R. CIV. P. 37(a)(5)(A). The court must not order payment if "the opposing party's nondisclosure, response, or objection was substantially justified."

The Supreme Court has written that a motion is "substantially justified" if "there is a 'genuine dispute,' or 'if reasonable people could differ as to [the appropriateness of the contested action].'" *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (brackets in original) (citations omitted). The court has examined the parties' disagreement over whether the Defendants were substantially justified in resisting a number of the jurisdictional discovery requests and finds that the Defendants' opposition was substantially justified. That the court "ultimately resolved" the issue in the Plaintiffs'

favor does not render the Defendants' position not substantially justified. FED. R. CIV. P. 37(a)(4) advisory committee's note (1970). Accordingly, the court is of the opinion that the "Plaintiffs' Motion for Attorney's Fees and Brief in Support" (de # 60) should be, and hereby is, DENIED.

IT IS SO ORDERED.

SIGNED this the 22nd day of May, 2009.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The middle initial "A." is written in a smaller, more compact script. The last name "Schell" is written with a large, sweeping "S" and a long, horizontal tail stroke that extends to the right.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE